1	UNITED STATE	S BANKRUPTCY COURT	
2	IN AND FOR TH	E DISTRICT OF ARIZONA	
3 4) In Chapter 11 presendings	
5	In re DONAHUE PARTNERS OF) ARIZONA, INC., dba SUNVEK,) In Chapter 11 proceedings) Case No. 2-06-BK-2953-CGC	
6	TCP ROOFING LLC, dba) (ase 110. 2-00-DR-2755-CGC)	
7	SUNVEK ROOFING,) Case No. 2-06-bk-2955-JMM	
8		(Jointly Administered Under 1-06-bk-2953-CGC)	
9	Debtors.	ORDER RE: ADMINISTRATIVE	
10) CLAIM OF GUENTHER PROPERTIES, LLC	
11		_}	
12	arising out of a rejected lease. The Debtor and Creditors Committee have objected.		
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16	should be effective as of October 11, 2006, when the motion to reject was filed; Landlord argues it		
17	should be effective as of the date of the order approving the rejection, November 17, 2007.		
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20	Machines Corp v. Mellon Financial Services Corp. #1, 67 F.3d 1021 (1st Cir. 1995) that rejection		
21	is generally effective upon court approval ¹ but that the Bankruptcy Court has discretion to exercise		
22	its equitable powers to set a retroactive date if justified by the circumstances.		
23	Here, the order has already been e	entered and there is no language stating whether the	
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25	1 At Home is silent on the issue of wh	ather court approval is the date of entry of the order	
26	¹ At Home is silent on the issue of whether court approval is the date of entry of the order (November 20), the date it was signed (November 17) or the date the Court orally granted the motion at a hearing (November 8). In this case, there was a gap of nine days between the hearing and the signing of the order. A review of the electronic file discloses that the order was uploaded on November 6 (two days prior to the hearing). Thus, the delay in signing and entry was not attributable to the movant (the Debtor) but to the Court. This is a factor that can be considered by		
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the Court in the exercise of its discretion.

effective date was intended to be anything other than the date of entry. Landlord argues that At Home does not authorize retroactive treatment where the Debtor did not request nunc pro tunc treatment. Further, Landlord argues that At Home requires the satisfaction of the four elements considered by the Court of Appeals in examining whether the Bankruptcy Court abused its discretion. This Court does not read At Home so narrowly. The Court of Appeals considered the four factors described because those are the four factors that the Bankruptcy Court considered in exercising its discretion. There is no exclusive list of factors, but the Court must nevertheless examine the record and articulate any reasons it relies upon if the date is to be altered from the date of approval. This can be done now in the context of Landlord's application for administrative expense as easily as at the time of the rejection motion.

In this case, as in most cases dealing with this issue, the key issue is when possession of the premises was passed from the Debtor to the Landlord. This factor is economic and pragmatic; so long as the Debtor has possession of the Landlord's property, it should pay for it; once the Landlord retakes possession and the property may be relet, the basis for a continuing administrative claim pending approval of a motion to reject substantially diminishes.

The record is unclear on this point. Debtor insists that the premises were turned over to the Landlord on October 11 when the motion to reject was filed and that they were in broom clean condition ready to be relet to a new tenant. Landlord insists that, although the inside of the premises were vacated, the loading dock is inaccessible because of vehicles and storage units owned by the Debtor. Although the parties may present evidence on other issues that bear on the Court's exercise of its discretion, resolution of this dispute will be the most important factor.

Counsel are directed to consult on this matter and agree on a process for presenting necessary

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1	evidence as soon as possible. Counsel shall then contact the courtroom deputy and the matter can	
2	be heard for scheduling purposes at a telephonic conference.	
3	So ordered.	
4	DATED: March 8, 2007	
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6	CHARLES G. CASE II	
7	UNITED STATES BANKRUPTCY JUDGE	
8	Comy of the foregoing mailed by the DNC and/on	
9	Copy of the foregoing mailed by the BNC and/or sent by auto-generated mail to:	
10	MICHAEL W. CARMEL, LTD. 80 East Columbus Avenue Phoenix, Arizona 85012-2334	
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